

ENTERED

January 24, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
Montrose Multifamily Members, LLC, <i>et al.</i> ¹)	Case No. 22-90323
)	
Debtors.)	Jointly Administered
)	
)	

STIPULATION AND AGREED ORDER

(No. 93)

This stipulation and agreed order (the “Stipulation and Order”) is entered into by and among Michael Tapley (“Tapley”) and the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the reasons and terms and conditions set forth.

WHEREAS, on October 4, 2022, each Debtor filed a voluntary petition for relief under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, (the “Bankruptcy Court”). The Debtors continue to operate their businesses and manage their estates as debtors in possession pursuant to 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Tapley filed a lawsuit against Debtor Westmoreland Partners, LLC in the 80th Judicial District of Harris County, Texas, cause number 2020-84002 styled *Michael Tapley v. Westmoreland Partners, LLC, et al.* (the “State Court Litigation”) on December 31, 2020; and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Montrose Multifamily Members II, LLC (5725); Colquitt 2008, LP (6108); Westmoreland Partners, LLC (1492); Graustark Members II, LLC (1605); Kipling Partners LLC (2339); MT Vernon Members, LLC (5014); and Norfolk Partners LLC (3182). The location of Debtor Montrose Multifamily Members, LLC’s principal place of business and the Debtors’ service address is 4203 Montrose Blvd, Suite 400, Houston, Texas, 77006.

WHEREAS, Tapley and the Debtors have reached an agreement to modify the automatic stay under a limited basis in order for the Tapley Lawsuit to proceed to the extent of available insurance coverage under the insurance policy administered by Clear Blue Specialty Insurance Company under its Policy No. AB01-000655-00 (the “Insurance Policy”).

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE BANKRUPTCY COURT, IT IS ORDERED:

1. Pursuant to section 362(d)(1) of the Bankruptcy Code, the Automatic Stay is hereby modified solely to allow Tapley to continue his claims against Westmoreland Partners, LLC in the State Court Litigation in all respects, to final and binding resolutions and/or settlement and collect from the Insurance Policy, and subject to the terms of this Stipulation and Order.

2. Except as expressly modified herein, the Automatic Stay shall remain in place for all other purposes.

3. Tapley acknowledges and agrees that any recovery he has against Westmoreland Partners, LLC and its directors, officers, advisors, employees, agents, representative, heirs, executors, administrators, successors, and assigns shall be limited to the insurance coverage available to Westmoreland Partners, LLC under the Insurance Policy, and that Tapley hereby releases Westmoreland Partners, LLC from any and all liability for all claims, whether direct or indirect, arising out of or related to the State Court Litigation in excess of the proceeds of the insurance coverage available under the Insurance Policy.

4. Each party understands and agrees that this Stipulation and Agreed Order is solely to allow Tapley to litigate the State Court Litigation to the extent of available insurance coverage under the Insurance Policy, and that the Stipulation and Agreed Order shall not be construed as an admission of liability by Westmoreland Partners, LLC.

5. Tapley agrees that no judgment shall be entered in the State Court Litigation against Westmoreland Partners, LLC in excess of the insurance coverage under the Insurance Policy.

6. Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall affect the rights of Westmoreland Partners, LLC or its insurers to assert any defenses in the State Court Litigation or any other action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order. Notwithstanding any other term or provision contained herein, this Stipulation is without prejudice to any of the rights, claims or defenses of Westmoreland Partners, LLC's insurers under the Insurance Policy, any agreements related to the Insurance Policy and/or any applicable state law, all of which are expressly reserved.

7. Tapley is hereby authorized to take all actions necessary to effectuate the relief granted in this Stipulation and Agreed Order in accordance with the Motion.

8. Each party executing this Stipulation and Agreed Order represents that such party has the full authority and legal power to do so.

9. This Stipulation and Agreed Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation, Agreement, and Order to present any copies, electronic copies, or facsimiles signed by the parties here to be charged.

10. This Stipulation and Agreed Order shall not be modified, altered, amended, or vacated without the written consent of the parties or by further order of the Bankruptcy Court.

11. This Stipulation and Agreed Order constitutes the entire agreement and understanding between Tapley and Westmoreland Partners, LLC relating to the subject matter herein and supersedes all previous or contemporaneous oral or written representations, understandings, or agreements between the parties.

12. This Stipulation and Agreed Order is subject to the approval of the Bankruptcy Court and shall not become effective against the Debtors unless and until it is “so-ordered” by the Court and shall apply only as to the above-captioned Debtors

13. This Stipulation and Agreed Order shall be governed by, and construed in accordance with, the laws of the State of Texas, except to the extent that the Bankruptcy Code applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

14. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

Signed: January 23, 2023.


DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Agreed as to form and substance:

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